

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GARY R. DIEFFENBACH,
Plaintiff

v.

EARL CRAGO, THOMAS SCOTT, MIKE
GARMAN, JOE CRAIGWELL, PAUL
SLOAD, KIM GLASER, CARRIE FERREE,:
ALLEN JONES, DONALD PATTERSON,
COLLEEN ALVIANI, BRIAN WILLIAMS,
GREG FAJT, JULIA SHERIDAN, MOLLY
LEACH, WILBUR HETRICK,
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF REVENUE, and
OFFICE OF INSPECTOR GENERAL,
Defendants

Civil Action No. 4:09-cv-967

(Chief Judge Kane)

(Magistrate Judge Smyser)

MEMORANDUM ORDER

Plaintiff initiated this action by filing a complaint on May 21, 2009. (Doc. No. 1.) The late Judge Malcolm Muir dismissed that complaint on May 27, 2009. (Doc. No. 4.) Plaintiff filed an amended complaint on June 18, 2009. (Doc. Nos. 5, 9.) On December 3, 2009, Judge Muir granted in part and denied in part a motion to dismiss. (Doc. No. 22.) Following motions for reconsideration filed by Defendants, Judge Muir vacated his December 3, 2009 order. (Doc. No. 34.) On April 1, 2010, Judge Muir granted in part and denied in part Defendants' motion to dismiss and granted Plaintiff leave to file an amended complaint. (Doc. Nos. 49, 50.) On that same date the case was transferred to this Court. On October 20, 2010, the Court adopted Magistrate Judge Smyser's report and recommendation that this matter be dismissed in part. (Doc. No. 79.) The Court denied Plaintiff's motion for reconsideration on December 6, 2010. (Doc. No. 90.) The Court denied Plaintiff's second motion for reconsideration on December 22,

2010. (Doc. No. 93.) On June 29, 2011, the Court adopted Magistrate Judge Smyser's report and recommendation that the Court grant summary judgment in favor of Defendants and entered judgment in favor of Defendants as to all remaining claims. (Doc. Nos. 127, 128.) On July 15, 2011, Plaintiff Gary Dieffenbach filed a notice of appeal and a motion for leave to pursue his appeal in forma pauperis. (Doc. Nos. 130, 131.) For the reasons that follow, the Court will deny Plaintiff's motion.

Rule 24 of the Federal Rules of Appellate Procedure provide that:

Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24.

Plaintiff's motion for leave to file in forma pauperis must fail. First, Plaintiff has failed to demonstrate an inability to pay the filing fees.¹ In his affidavit he indicated that his wife has a gross monthly income of \$640 and that he receives a pension.² (Doc. No. 131.) Plaintiff has assets including \$3,500 in his checking account, real estate worth \$136,000, and automobiles

¹ Judge Muir denied Plaintiff's motion to pursue his civil suit in forma pauperis based on Plaintiff's failure to establish indigence. (Doc. No. 4.)

² In his application to file his suit in forma pauperis Plaintiff estimated the amount of his pension at \$2,400 per month. (Doc. No. 4.) Plaintiff has not indicated the amount of his pension in his present motion.

worth \$3,500. (Id.) The Court finds that these assets are sufficient to pay the appellate filing fee. Moreover, Plaintiff has failed to state any issues that he intends to present on appeal. See Fed. R. App. P. 24(a)(1)(C). Further, the Court is unable to discern any non-frivolous issues Plaintiff may raise on appeal.

ACCORDINGLY, on this 2nd day of August 2011, **IT IS HEREBY ORDERED** **THAT** Plaintiff's motion to proceed in forma pauperis on appeal (Doc. 131) is **DENIED**. The Court **DIRECTS** Plaintiff to tender the appellate filing and docketing fee of \$455 to the Clerk of the Court in this District or Plaintiff may refile his motion seeking leave to proceed in forma pauperis with the United States Court of Appeals for the Third Circuit.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania